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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/980,254	02/08/2002	Jacques Sebban	05725.1001	1052

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FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER  
LLP  
1300 I STREET, NW  
WASHINGTON, DC 20005

EXAMINER

COMSTOCK, DAVID C

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 05/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/980,254	SEBBAN, JACQUES	
	<b>Examiner</b>	<b>Art Unit</b>	
	David Comstock	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 15-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 March 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/00,03/02,11/03</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Drawings***

The proposed drawing changes filed on 25 March 2002 have not been entered because the changes described in the letter accompanying the request are not reflected in the drawings submitted therewith. Specifically, in Figures 7a and 7b, elements 120 and 104 are not shifted to the right such that the axis A1 and film hinge 123 are in line with edge 51. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 15-19, 25, 28-31, 33, 34, 41, and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by Yuhara (5,078,159; cited by Applicant).

Yuhara discloses a make-up compact comprising a base 10, an intermediate element 30, and a lid 20 (see Figs. 3a-3d). The base comprises a compartment defined in a receptacle 12 for make-up 11 (see col. 3, lines 37-38). The base has a rear lateral wall delimited by a first edge adjacent the lid (when closed) and a second edge, opposite the first edge. The base includes a first catch member 16 on the lateral wall, a

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small distance from the first edge, and an opening 43 extending in a plane at the upper extent of the opening (see Figs. 2 and 3a). The intermediate element includes a second catch member--the portion of the intermediate element that extends into the opening 37 to form a catch surface in the opening to engage the first catch member. The catch members snap together such that the base is irreversibly locked to the intermediate element under normal conditions, yet is reversibly locked when a "slightly strong force" is applied (see col. 5, lines 31-36 and col. 5, line 63 - col. 6, line 6). Either or both of the catch members must flex in order for the larger surface of the first catch member 16 to pass through the smaller opening 37 of the second catch member (see Figs 3b and 3c). The intermediate element pivots relative to the lid and the base, and the lid pivots 360 degrees relative to the base (see Figs. 3a-3d). When the first and second catch members engage to lock the intermediate element to the base, both the base and the intermediate element are arranged on one side of the plane (see Fig. 3b). The intermediate element includes a first longitudinal edge (the edge to which the assembly line appears to point in Fig. 5, i.e., the upper edge facing the compact, when the lid is closed), a second longitudinal edge opposite the first longitudinal edge (i.e. the less obtuse vertex beneath the first edge, when the lid is closed), a first articulation axis 36 in the vicinity of the first edge, and a second articulation axis 38 in the vicinity of the second edge (see Figs. 3b and 5). The articulation axes comprise pin hinges 31, 32 (see Fig. 2). A latch 23,14 reversibly locks the lid to the base in a closed position (see Figs. 3a and 3b).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 27 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yuhara (5,078,159; cited by Applicant).

Yuhara discloses the claimed invention except for the lid being formed from a material chosen from urea formaldehyde, acrylobutadiene styrene, polyoxymethylene, and polystyrene acrylonitrile. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the lid from urea formaldehyde, acrylobutadiene styrene, polyoxymethylene, and polystyrene acrylonitrile, or from any of numerous other known materials, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. It also would have been obvious to substitute a catch member having a hook shape for a catch member having snap configuration since this amounts to nothing more than the substitution of functionally equivalent latching mechanisms known in the art.

Claims 20-24, 26, 35-40, 43, and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yuhara (5,078,159; cited by Applicant) in view of Lunderman et al. (4,840,288; cited by Applicant).

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Yuhara discloses the claimed invention except for the case being molded in a single piece and including one or more film hinges. Lunderman et al. disclose that single-piece molded cases with film hinges and cases with pin hinges are functionally equivalent cases and hinge types known in the art (see col. 3, lines 7-16). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute a case molded in a single piece and including film hinges for a case with pin hinges, as this is merely the substitution of functionally equivalent cases and hinge types known in the art. It would have been further obvious to form the case from a polyolefin or polypropylene polyolefin, or from any of numerous other known materials, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.


### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Comstock whose telephone number is (703) 308-8514.



D. Comstock  
14 May 2004



EDUARDO C. ROBERT  
PRIMARY EXAMINER